

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

JARROD B. FOSTER,

Plaintiff,

v.

No. CV 15-1047 CG/LAM

NOVA HARDBANDING, LLC, et al.

Defendants.

**ORDER DENYING AS MOOT PLAINTIFF'S
MOTION FOR CLERICAL DEFAULT**

THIS MATTER comes before the Court upon Plaintiff's *Motion for Clerical Default* ("Motion for Default"), (Doc. 16), filed December 30, 2015. Plaintiff filed his original *Complaint*, (Doc. 1), on November 16, 2015. Because defendants did not file a timely response to the Complaint, Plaintiff filed his Motion for Default. On the same day Plaintiff filed his Motion for Default, Defendants filed *Defendant Kenneth Bromley's Motion to Dismiss Under Fed. R. Civ. P. 12(b)(4), and Subject Thereto, Defendants' Original Answer* ("Motion to Dismiss"), (Doc. 18). In response, Plaintiff filed his *First Amended Complaint* ("Amended Complaint"), (Doc. 20), on January 4, 2016, in accordance with Fed. R. Civ. P. 15(a)(1)(B). In his Amended Complaint, Plaintiff corrected the spelling of Defendant Kenneth Bromley's name and, as in his original Complaint, alleged that Defendants violated the Fair Labor Standards Act. (Doc. 20 at 1).

An amended complaint supersedes a prior complaint "and renders it of no legal effect." *Davis v. TXO Production Corp.*, 929 F.2d 1515, 1517 (10th Cir. 1991) (internal quotation marks omitted) (quoting *Int'l Controls Corp. v. Vesco*, 556 F.2d 665, 668 (2d

Cir. 1977)). Therefore, the Court may deny as moot a motion for default judgment, because the motion is invalidated by the filing of an amended complaint. *Marotta v. Cortez*, No. 08-cv-02421-CMA-CBS, 2008 WL 5044496, at *1 (D. Colo. Nov. 20, 2008) (unpublished) (citing *Vanguard Fin. Serv. Corp. v. Johnson*, 736 F.Supp. 832, 835 (N.D. Ill. 1990); *Best Western Int'l, Inc. v. Melbourne Hotel Investors, LLC*, No. CV 06-2276-PHX-MHM, 2007 WL 2990132, at *2 (D. Ariz. Oct. 11, 2007) (unpublished)); *Ogunsalu v. Nair*, No. 06-55842, 264 Fed. Appx. 672, 674 (9th Cir. Jan. 22, 2008) (unpublished) (Filing an amended complaint “render[ed] [the] motion for entry of default judgment as to the original complaint untimely.”) Accordingly, Plaintiff’s Amended Complaint rendered his Motion for Default moot.

IT IS THEREFORE ORDERED that Plaintiff’s *Motion for Clerical Default*, (Doc. 16), is **DENIED AS MOOT**.

A handwritten signature in black ink, appearing to read 'Carmen E. Garza', with a long horizontal line extending to the right.

THE HONORABLE CARMEN E. GARZA
UNITED STATES MAGISTRATE JUDGE